

§ 90-270.15. Denial, suspension, or revocation of licenses and health services provider certification, and other disciplinary and remedial actions for violations of the Code of Conduct; relinquishing of license.

(a) Any applicant for licensure or health services provider certification and any person licensed or certified under this Article shall have behaved in conformity with the ethical and professional standards specified in this Code of Conduct and in the rules of the Board. The Board may deny, suspend, or revoke licensure and certification, and may discipline, place on probation, limit practice, and require examination, remediation, and rehabilitation, or any combination thereof, all as provided for in subsection (b) below. The Board shall act upon proof that the applicant or licensee engaged in illegal, immoral, dishonorable, unprofessional, or unethical conduct by violating any of the provisions of the Code of Conduct as follows:

- (1) Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge;
- (2) Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice psychology, or a misdemeanor charge reflecting the inability to practice psychology with due regard to the health and safety of clients or patients;
- (3) Has engaged in fraud or deceit in securing or attempting to secure or renew a license or in securing or attempting to secure health services provider certification under this Article or has willfully concealed from the Board material information in connection with application for a license or health services provider certification, or for renewal of a license under this Article;
- (4) Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of psychology, the offer of psychological services, the filing of Medicare, Medicaid, or other claims to any third party payor, or in any manner otherwise relevant to fitness for the practice of psychology;
- (5) Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, certification as a health services provider, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of psychology to the public, any individual, the Board, or any other organization;
- (6) Has had a license or certification for the practice of psychology in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article;
- (7) Has violated any provision of this Article or of the duly adopted rules of the Board;
- (8) Has aided or abetted the unlawful practice of psychology by any person not licensed by the Board;
- (9) For a licensed psychologist, has provided health services without health services provider certification;
- (10) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection, or in the then-current code of ethics of the American Psychological Association, except as the provisions of such

- code of ethics may be inconsistent and in conflict with the provisions of this Article, in which case, the provisions of this Article control;
- (11) Has practiced psychology in such a manner as to endanger the welfare of clients or patients;
 - (12) Has demonstrated an inability to practice psychology with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition;
 - (13) Has practiced psychology or conducted research outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience;
 - (14) Has failed to use, administer, score, or interpret psychological assessment techniques, including interviewing and observation, in a competent manner, or has provided findings or recommendations which do not accurately reflect the assessment data, or exceed what can reasonably be inferred, predicted, or determined from test, interview, or observational data;
 - (15) Has failed to provide competent diagnosis, counseling, treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State;
 - (16) In the absence of established standards, has failed to take all reasonable steps to ensure the competence of services;
 - (17) Has failed to maintain a clear and accurate case record which documents the following for each patient or client:
 - a. Presenting problems, diagnosis, or purpose of the evaluation, counseling, treatment, or other services provided;
 - b. Fees, dates of services, and itemized charges;
 - c. Summary content of each session of evaluation, counseling, treatment, or other services, except that summary content need not include specific information that may cause significant harm to any person if the information were released;
 - d. Test results or other findings, including basic test data; and
 - e. Copies of all reports prepared;
 - (18) Except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record for at least seven years from the date of the last provision of psychological services; or, except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record for three years from the date of the attainment of majority age by the patient or client or for at least seven years from the date of the last provision of psychological services, whichever is longer; or, except when prevented from doing so by circumstances beyond the psychologist's control, has failed to retain securely and confidentially the complete case record indefinitely if there are pending legal or ethical matters or if there is any other compelling circumstance;
 - (19) Has failed to cooperate with other psychologists or other professionals to the potential or actual detriment of clients, patients, or other recipients of service, or has behaved in ways which substantially impede or impair other psychologists' or other professionals' abilities to perform professional duties;

- (20) Has exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the psychologist or a third party;
- (21) Has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee;
- (22) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional psychological associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction; or has failed to cooperate with institutional review boards or professional standards review organizations, when those organizations or entities have jurisdiction; or
- (23) Has refused to appear before the Board after having been ordered to do so in writing by the Chair;

(b) Upon proof that an applicant or licensee under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, issue a formal reprimand or formally censure the applicant or licensee, may place the applicant or licensee upon probation with such appropriate conditions upon the continued practice as the Board may deem advisable, may require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee, may require supervision for the services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee, may limit or circumscribe the practice of psychology provided by the applicant or licensee with respect to the extent, nature, or location of the services provided, as the Board deems advisable, or may discipline and impose any appropriate combination of the foregoing. In addition, the Board may impose such conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as requirements for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether or not an applicant or licensee is physically or mentally capable of practicing psychology with reasonable skill and safety with patients or clients, then, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing psychology with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. Such psychologist or physician shall be designated by the court. The expenses of such evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license or health services provider certification, or other

disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing's having been conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of psychological services' having been provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of psychological services to a client or a patient who has not consented to the public disclosure of such treatment or services as may be necessary for the protection and rights of such patient or client of the accused applicant or licensee and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters will not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of such investigation, inquiry, or hearing except that identifying information concerning the treatment of or delivery of services to a patient or client who has not consented to the public disclosure of such treatment or services may be deleted; and provided, further, that if any such record, paper, or other document containing information theretofore collected and compiled by or on behalf of the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of psychological services to a patient or client who has not consented to the public disclosure of such treatment or services.

(f) A license and a health services provider certificate issued under this Article are suspended automatically by operation of law after failure to renew a license for a period of more than sixty days after the renewal date. The Board may reinstate a license and a health services provider certificate suspended under this subsection upon payment of a fee as specified in G.S. 90-270.18(b), and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is suspended under this subsection and, upon proof of any violation of this Article by any such person, the Board may take disciplinary action as authorized by this section.

(g) A person whose license or health services provider certification has been denied or revoked may reapply to the Board for licensure or certification after the passage of one calendar year from the date of such denial or revocation.

(h) A licensee may, with the consent of the Board, voluntarily relinquish his or her license or health services provider certificate at any time. The Board may delay or refuse the granting of its consent as it may deem necessary in order to investigate any pending complaint, allegation, or issue regarding violation of any provision of this Article by the licensee. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by any such person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt such rules as it deems reasonable and appropriate to interpret and implement the provisions of this section. (1967, c. 910, s. 15; 1973, c. 1331, s. 3; 1977, c. 670, s. 9; 1979, c. 1005, s. 4; 1985, c. 734, s. 9; 1987, c. 827, s. 1; 1991, c. 239, s. 1; c. 761, ss. 14-16; 1993, c. 375, s. 1; 1993 (Reg. Sess., 1994), c. 570, s. 7.)